IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WP(C).No. 13172 of 2006(R)

AGAINST THE ORDER IN EP 24/2004 IN
OS.190/2001 of M.C.,PARAPPANANGADI

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PETITIONER:

V. MOHAMMEDKUTTY, S/O. UNNI MOHAMMED,
EDAYA PARAMBATH HOUSE, CHERUKAVU, P.O. PULIKKAL,
MALAPPURAM DISTRICT.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:

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1. PALAPETTI MOHAMMED, S/O. ALAVI,
CHERUKAVU, P.O. PULIKKAL, MALAPPURAM DISTRICT.

2. V. MOHAMMED SHARAF, S/O. MOHAMMED KUTTY,
EDAYA PARAMBATH HOUSE, CHERUKAVU, P.O. PULIKKAL,
MALAPPURAM DISTRICT.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.HARISH R. MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27/11/2006 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

Ext.P1:- True copy of the judgment in W.P.(C) No.10116/06 dated 4.4.2006 passed by this Hon'ble Court.

Ext.P2:- True copy of the counter filed by the petitioner in E.P.24/04 before Parappanangadi Munsiff Court dated 07.04.2006.

Ext.P3:- True copy of the affidavit filed by the petitioner in support of the application to recall the warrant issued in E.P.24/04 on the file of Parappanangadi Munsiff Court dated 07.04.2006.

/true copy/

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.13172 OF 2006

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Dated this the 27th day of November,2006

JUDGMENT

Petitioner is the father of second judgment debtor. First respondent is the decree holder. When second respondent was arrested in execution of the decree, petitioner executed a bond and got him released. The second respondent pleaded no means which was overruled by the executing court and ordered his arrest. By that time second respondent left India. First respondent proceeded against petitioner by attachment and sale of the property shown in the bond. While so, personal execution was also taken. Apprehending arrest, petitioner approached this court by filing W.P.(C) 10116/06. As per Ext.P1 judgment, this court held that anticipating illegal order, Article 227 of the Constitution of India cannot be invoked. Thereafter petitioner appeared and contested the case. Still executing court passed an order of

arrest which is challenged in this petition filed under Article 227 of the Constitution of India.

2. Learned counsel appearing for the petitioner and first respondent were heard.

3. Learned counsel appearing for the first respondent also submitted that decree holder only proceeded against the property of the petitioner which was bound under the bond executed by him, when second respondent was released and did not an arrest and detention of the petitioner.

4. Petitioner is not the judgment debtor. He is only liable to the extent of the liability undertaken in the bond. In the bond, he had only undertaken to produce second respondent judgment debtor and on failure agreed that his property shown therein could be proceeded with. The executing court is therefore not entitled to order arrest and detention of petitioner for violating the terms of the bond. As second respondent judgment debtor could not be produced by petitioner, executing court can proceed against

the property as provided in the bond, for which a draft proclamation has already been produced before the court below. In such circumstance, executing court is directed not to proceed against petitioner by his arrest and detention and instead directed to proceed only against the property.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006